

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Applications of AT&T Mobility Spectrum LLC,)	WT Docket No. 12-240
New Cingular Wireless PCS, LLC, Comcast)	
Corporation, Horizon Wi-Com, LLC, NextWave)	
Wireless, Inc., and San Diego Gas & Electric)	
Company)	
)	
For Consent To Assign And Transfer Licenses)	

MEMORANDUM OPINION AND ORDER

Adopted: December 18, 2012

Released: December 18, 2012

By the Commission:

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I. INTRODUCTION

1. In this Order, we consider the applications of AT&T Inc., Comcast, Horizon, NextWave, and San Diego Gas & Electric (the “Applicants”) for Commission consent to the assignment and transfer of control to AT&T of Wireless Communications Service (WCS) and Advanced Wireless Services (AWS-1) licenses in 608 CMAs. Based on our review of the competitive effects of AT&T’s post-transaction spectrum holdings on a local and national level, we find that these transactions are not likely to result in competitive or other public interest harms. We also anticipate that these transactions are likely to result in certain public interest benefits by facilitating the transition of long-underutilized WCS spectrum towards mobile broadband use, thereby supporting our goal of expanding mobile broadband deployment throughout the country. Thus, we conclude that, on balance, these transactions are in the public interest and accordingly approve them, as discussed below.

II. BACKGROUND

A. Description of Applicants

2. AT&T Inc. (“AT&T”), incorporated in Delaware and headquartered in Dallas, Texas, is a communications holding company that ranks among the leading providers of telecommunications services in the United States and around the world, reporting more than \$126 billion in revenues in 2011.¹ AT&T’s wireless telecommunications operations generated 45 percent of AT&T’s operating revenues in 2011,² and as of December 31, 2011, the company had 103 million wireless subscribers.³ Its wireless operations rely on High Speed Downlink Packet Access/Universal Mobile Telecommunications System (“HSDPA/UMTS”) and HSDPA+ network technology, with HSDPA+ providing 4G speed when combined with AT&T’s upgraded backhaul.⁴ The company is transitioning to a 4G Long Term Evolution (“LTE”) network that it expects largely to complete by the end of 2013.⁵ AT&T Mobility Spectrum LLC and New Cingular Wireless PCS, LLC, both indirect wholly-owned subsidiaries of AT&T, are applicants here.⁶

3. Comcast Corporation (“Comcast”) is a leading provider of entertainment and communication products and services.⁷ As part of its business, Comcast has sought to develop wireless options to provide mobility and extend services to customers.⁸ Various subsidiaries of Comcast are

¹ AT&T Inc., SEC Form 10-K, at 1 (filed Feb. 24, 2012) (“AT&T 10-K”), *available at* http://www.sec.gov/Archives/edgar/data/732717/000073271712000025/ye11_10k.htm; AT&T Inc., AT&T Inc. 2011 Annual Report, Ex. 13 (filed Feb. 24, 2012), *available at* <http://www.sec.gov/Archives/edgar/data/732717/000073271712000025/ex13.htm>.

² AT&T 10-K at 6.

³ AT&T 10-K at 3.

⁴ AT&T 10-K at 2.

⁵ AT&T 10-K at 2.

⁶ *See* ULS File Nos. 0005301644, 0005301653, 0005301658, 0005301664, 0005301665, 0005301673, 0005301689, and 0005301703 (“AT&T-Comcast Applications”); ULS File Nos. 0005305382 and 0005305388 (“AT&T-Horizon Applications”); ULS File Nos. 0005346050 and 0005346124 (“AT&T-NextWave Applications”); and ULS File No. 0005380507 (“AT&T-SDG&E Application” and, collectively, the “Applications”).

⁷ Comcast Corporation, SEC Form 10-K at 1-3 (filed Feb. 23, 2012) (“Comcast 10-K”), *available at* <http://www.sec.gov/Archives/edgar/data/1166691/000119312512073905/d262998d10k.htm>.

⁸ Comcast 10-K at 5-6.

applicants here.⁹ Horizon Wi-Com, LLC (“Horizon”) holds several WCS licenses.¹⁰ NextWave Wireless, Inc. (“NextWave”) is a wireless spectrum holding company currently undergoing financing and restructuring changes, including the sale of wireless spectrum assets.¹¹ San Diego Gas & Electric Company (“SDG&E”), a subsidiary of Sempra Energy, is a public utility providing natural gas and electric energy service to 3.4 million people in southern California.¹² SDG&E has acquired wireless spectrum licenses for use in “Smart Grid” applications.¹³

B. Description of Transactions

4. The applications we consider here are related to four separate proposed transactions that involve the assignment or transfer of control of numerous WCS licenses to AT&T, and we accordingly have consolidated our review in a single docket. The Comcast, Horizon, and SDG&E transactions involve only the assignment of WCS licenses, while the NextWave transaction involves the transfer of control of entities holding WCS and AWS-1 licenses.¹⁴ As a result of these proposed transactions, AT&T overall would acquire AWS-1 and WCS spectrum in 608 CMAs,¹⁵ covering 82 percent of the population of the contiguous 48 states. By spectrum band, AT&T would acquire: 10-20 megahertz of WCS A and B Block spectrum in 473 CMAs, covering close to 70 percent of the population of the contiguous 48 states; 5-10 megahertz of WCS C and D Block spectrum in 344 CMAs, covering 54 percent of the population of the contiguous 48 states; and 10-30 megahertz of AWS-1 spectrum in 29 CMAs,¹⁶ covering 2 percent of the population of the contiguous 48 states.¹⁷ Breaking out the numbers by transaction, AT&T would acquire 10 to 25 megahertz of A, B, and/or C Block WCS spectrum in 149 CMAs from Comcast; 10 megahertz of A Block WCS spectrum in 132 CMAs from Horizon; 5 to 30 megahertz of A, B, C, and/or D Block WCS spectrum in 476 CMAs and 10 to 30 megahertz of AWS-1 spectrum in 29 CMAs from

⁹ These subsidiaries are: Comcast WCS ME02, Inc., Comcast WCS ME04, Inc., Comcast WCS ME05, Inc., Comcast WCS ME16, Inc., Comcast WCS ME19, Inc., Comcast WCS ME22, Inc., Comcast WCS ME26, Inc., and Comcast WCS ME28, Inc.

¹⁰ AT&T-Horizon Applications, Public Interest Statement at 1.

¹¹ See AT&T-NextWave Applications, Public Interest Statement at 1; NextWave Wireless Inc., SEC Form 10-K at 2-3 (filed Mar. 12, 2012), *available at* <http://www.sec.gov/Archives/edgar/data/1374993/000119312512109954/d273816d10k.htm>.

¹² See AT&T-SDG&E Application, Public Interest Statement at 1; Sempra Energy, SEC Form 10-K at 7-18 (filed Feb. 28, 2012), *available at* <http://www.sec.gov/Archives/edgar/data/86521/000008652112000010/sre10k2011.htm>.

¹³ AT&T-SDG&E Application, Public Interest Statement at 1.

¹⁴ WCS consists of spectrum in the 2305-2320/2345-2360 MHz bands, with blocks designated as set forth in the band plan below. AWS-1 consists of spectrum in the 1710-1755/2110-2155 MHz bands.

¹⁵ CMAs, or Cellular Market Areas, are standard geographic areas used for the licensing of cellular systems and are comprised of Metropolitan Statistical Areas (MSAs) and Rural Service Areas (RSAs). See 47 C.F.R. § 22.909; Application of AT&T Inc. and Qualcomm Incorporated For Consent to Assign Licenses and Authorizations, WT Docket No. 11-18, *Order*, 26 FCC Rcd 17589, 17603 ¶ 32 n.96 (2011) (“AT&T-Qualcomm Order”).

¹⁶ In the 29 CMAs in which AT&T would be acquiring AWS-1 spectrum from NextWave, AT&T would be acquiring 10-20 megahertz of AWS-1 spectrum in 83 counties and 30 megahertz of AWS-1 spectrum in one county (Columbus County, NC, in CMA 575).

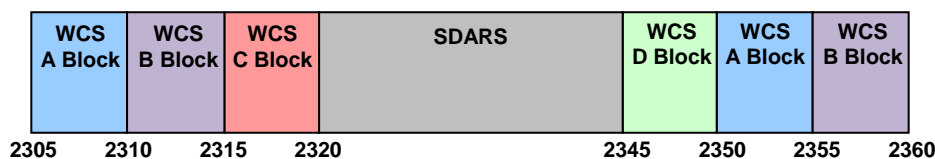
¹⁷ In the CMAs in which AT&T is acquiring WCS spectrum, post-transaction AT&T would hold 10-30 megahertz of WCS spectrum, including 20 megahertz of WCS A and B Block spectrum in 535 CMAs. In the CMAs in which AT&T is acquiring AWS-1 spectrum, post-transaction AT&T would hold 40 megahertz of AWS-1 spectrum in 5 counties in two CMAs (CMA 364 – Flagler and Putnam Counties, FL, CMA 575 – Bladen, Hoke, Robeson Counties, NC), and 10-30 megahertz of AWS-1 spectrum in the remaining counties of those CMAs and in the other 27 CMAs.

NextWave; and 10 megahertz of C and D Block WCS spectrum in CMA 18 (San Diego, California) from SDG&E.

5. The Applicants contend that the proposed license assignments and transfers of control would result in a more efficient use of underutilized spectrum, enable AT&T to expand its wireless broadband capacity, and provide more robust mobile broadband services to the public across the country.¹⁸ The Applicants state that, despite efforts to develop WCS spectrum, the band presently is “underutilized” due to various “technical obstacles” relating to coordination with the Satellite Digital Audio Radio Service (SDARS) licensee.¹⁹ The Applicants state that AT&T can put the WCS spectrum acquired through these transactions to a more efficient use in its LTE operations.²⁰ Further, the Applicants state that AT&T can deploy the WCS spectrum in “efficient-sized increments” and that it has the “ability to make the multiyear financial and resource commitment that is necessary before the roll-out of network equipment and devices utilizing the spectrum can even begin.”²¹

6. On October 17, 2012, we released an Order on Reconsideration that revised certain provisions of the rules applicable to the WCS and the SDARS.²² We noted that the revisions we adopted in that order were intended to facilitate the deployment of broadband services in the WCS bands while continuing to protect satellite radio and aeronautical mobile telemetry operations in adjacent bands.²³

WCS Band Plan



C. Transaction Review Process

7. Between August 1, 2012 and August 13, 2012, Comcast, NextWave, and Horizon filed applications with AT&T seeking Commission approval of the proposed assignment and transfer of control of certain WCS and AWS-1 licenses to AT&T.²⁴ On August 31, 2012, the Commission released a public notice establishing a single docket and pleading schedule for the proposed transactions, with petitions to deny due October 1, 2012, oppositions due October 11, 2012, and replies due October 22, 2012.²⁵ On September 14, 2012, SDG&E filed an application with AT&T seeking Commission approval

¹⁸ See, e.g., AT&T-Comcast Applications, Public Interest Statement at i, 8.

¹⁹ See, e.g., AT&T-Comcast Applications, Public Interest Statement at 8-9.

²⁰ See, e.g., AT&T-Comcast Applications, Public Interest Statement at 11-12.

²¹ AT&T-Comcast Applications, Public Interest Statement at 12-13.

²² Amendment of Part 27 of the Commission’s Rules to Govern the Operation of Wireless Communications Services in the 2.3 GHz Band, WT Docket No. 07-293, Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band, IB Docket No. 95-91, *Order on Reconsideration*, 27 FCC Rcd 13651 (2012) (“WCS Order on Reconsideration”).

²³ *WCS Order on Reconsideration*, 27 FCC Rcd at 13652 ¶ 2.

²⁴ AT&T Seeks FCC Consent to the Assignment and Transfer of Control of WCS and AWS-1 Licenses, WT Docket No. 12-240, *Public Notice*, 27 FCC Rcd 10329 (WTB 2012) (“AT&T WCS Public Notice”).

²⁵ *AT&T WCS Public Notice*, 27 FCC Rcd at 10331.

of the proposed assignment of certain WCS licenses to AT&T, and the Commission subsequently released a public notice adding this proposed transaction to the previously established docket and maintaining the announced pleading schedule.²⁶

8. In response to these public notices, the Commission received a petition by the Competitive Carriers Association (“CCA”) seeking to consolidate consideration of the proposed transactions with other spectrum transactions involving AT&T,²⁷ as well as comments filed by Level 3 Communications, LLC (“Level 3”) requesting the imposition of certain interconnection conditions.²⁸ Also, Maneesh Pangasa submitted a number of filings, including a petition.²⁹ The Applicants filed a Joint Opposition on October 11, 2012.³⁰ The Commission received replies to the Joint Opposition from Level 3 and Maneesh Pangasa.³¹

9. On November 21, 2012, the Wireless Telecommunications Bureau released a public notice announcing that Numbering Resource Utilization and Forecast (“NRUF”) reports and local number portability (“LNP”) data would be placed into the record and adopted a protective order pursuant to which the Applicants and third parties would be allowed to review the specific NRUF reports and LNP data placed into the record.³²

III. STANDARD OF REVIEW AND PUBLIC INTEREST FRAMEWORK

10. Pursuant to section 310(d) of the Communications Act, we must determine whether the Applicants have demonstrated that the proposed assignment and transfer of control of licenses would serve the public interest, convenience, and necessity.³³ In making this assessment, we first assess whether the proposed transaction complies with the specific provisions of the Communications Act,³⁴ other applicable statutes, and the Commission’s rules.³⁵ If the transaction does not violate a statute or rule, we

²⁶ AT&T Mobility Spectrum LLC and San Diego Gas & Electric Company Seek FCC Consent to the Assignment of Two WCS Licenses, WT Docket No. 12-240, *Public Notice*, 27 FCC Rcd 11159 (WTB 2012) (“AT&T SDG&E Public Notice”).

²⁷ Petition For Consolidated Treatment of Competitive Carriers Association, filed Oct. 1, 2012 (“CCA Petition”).

²⁸ Comments of Level 3 Communications, LLC, filed Oct. 1, 2012 (“Level 3 Comments”).

²⁹ Petition to Conditionally Approve or Deny of Maneesh Pangasa, filed Sept. 4, 2012 (“Pangasa Petition”).

³⁰ Joint Opposition of Applicants and Motion to Dismiss, filed Oct. 11, 2012 (“Joint Opposition”).

³¹ See Reply of Level 3 Communications, LLC, filed Oct. 22, 2012 (“Level 3 Reply”); Reply of Maneesh Pangasa, filed Oct. 16, 2012. In addition to Mr. Pangasa’s Petition and Reply, he submitted a number of other comments (“Pangasa Pleadings”).

³² See Applications of AT&T Mobility Spectrum LLC, New Cingular Wireless PCS, LLC., Comcast Corporation, Horizon Wi-Com, LLC, NextWave Wireless, Inc., and San Diego Gas & Electric Company For Consent To Assign or Transfer Control of Licenses and Authorizations, Numbering Resource Utilization and Forecast Reports and Local Number Portability Reports to be Placed into the Record, Subject to Protective Order, WT Docket No. 12-240, CC Docket No. 99-200, *Public Notice*, DA 12-1888 (November 21, 2012); Applications of AT&T Mobility Spectrum LLC, New Cingular Wireless PCS, LLC., Comcast Corporation, Horizon Wi-Com, LLC, NextWave Wireless, Inc., and San Diego Gas & Electric Company For Consent To Assign or Transfer Control of Licenses and Authorizations, WT Docket No. 12-240, *NRUF/LNP Protective Order*, DA 12-1887 (WTB, November 21, 2012).

³³ 47 U.S.C. § 310(d).

³⁴ Section 310(d) requires that we consider the application as if the proposed assignee was applying for the licenses directly under Section 308 of the Act, 47 U.S.C. § 308. See, e.g., *AT&T-Qualcomm Order*, 26 FCC Rcd at 17598 ¶ 23.

next consider whether it could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Communications Act or related statutes.³⁶ We then employ a balancing test weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.³⁷ The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, will serve the public interest.³⁸

11. Our public interest evaluation necessarily encompasses the “broad aims of the Communications Act,” which include, among other things, a deeply rooted preference for preserving and enhancing competition in relevant markets, accelerating private sector deployment of advanced services, and generally managing the spectrum in the public interest.³⁹ Our public interest analysis also can entail assessing whether the proposed transaction will affect the quality of communications services or result in the provision of new or additional services to consumers.⁴⁰ In conducting this analysis, we may consider technological and market changes, and the nature, complexity, and speed of change of, as well as trends within, the communications industry.⁴¹

12. Our competitive analysis, which forms an important part of the public interest evaluation, is informed by, but not limited to, traditional antitrust principles.⁴² If the Commission is unable to find that the proposed transaction serves the public interest for any reason or if the record presents a

(Continued from previous page)

³⁵ See, e.g., *AT&T-Qualcomm Order*, 26 FCC Rcd at 17598 ¶ 23, Applications of AT&T Inc. and Cellco Partnership d/b/a/ Verizon Wireless, WT Docket No. 09-104, *Memorandum Opinion and Order*, 25 FCC Rcd 8704, 8716 ¶ 22 (2010) (“*AT&T-Verizon Wireless Order*”); Applications of AT&T Inc. and Centennial Communications Corp. For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Leasing Arrangements, WT Docket No. 08-246, *Memorandum Opinion and Order*, 24 FCC Rcd 13915, 13927 ¶ 27 (2009) (“*AT&T-Centennial Order*”).

³⁶ See, e.g., *AT&T-Qualcomm Order*, 26 FCC Rcd at 17598-99 ¶ 23; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8716 ¶ 22; *AT&T-Centennial Order*, 24 FCC Rcd at 13927 ¶ 27.

³⁷ See, e.g., *AT&T-Qualcomm Order*, 26 FCC Rcd at 17599 ¶ 23; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8716 ¶ 22; *AT&T-Centennial Order*, 24 FCC Rcd at 13927 ¶ 27.

³⁸ See, e.g., *AT&T-Qualcomm Order*, 26 FCC Rcd at 17599 ¶ 23; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8716 ¶ 22; *AT&T-Centennial Order*, 24 FCC Rcd at 13927 ¶ 27.

³⁹ See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13928 ¶ 28; Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and *De Facto* Transfer Leasing Arrangements and Petition for Declaratory Ruling that the Transaction is Consistent with Section 310(b)(4) of the Communications Act, WT Docket No. 08-95, *Memorandum Opinion and Order and Declaratory Ruling*, 23 FCC Rcd 17444, 17461 ¶ 27 (2008) (“*Verizon Wireless-ALLTEL Order*”); Sprint Nextel Corporation and Clearwire Corporation Applications for Consent to Transfer Control of Licenses, Leases, and Authorizations, WT Docket No. 08-94, *Memorandum Opinion and Order*, 23 FCC Rcd 17570, 17580 ¶ 20 (2008) (“*Sprint Nextel-Clearwire Order*”).

⁴⁰ See, e.g., Applications of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC and Cox TMI, LLC For Consent To Assign AWS-1 Licenses, WT Docket No. 12-4, *Memorandum Opinion and Order and Declaratory Ruling*, 27 FCC Rcd 10698, 10752 ¶ 143 (2012) (“*Verizon Wireless-SpectrumCo Order*”); *AT&T-Centennial Order*, 24 FCC Rcd at 13928 ¶ 28; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17461 ¶ 27; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17580 ¶ 20.

⁴¹ See, e.g., *AT&T-Qualcomm Order*, 26 FCC Rcd at 17599 ¶ 24; *AT&T-Centennial Order*, 24 FCC Rcd at 13928 ¶ 28; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17461 ¶ 27; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17580 ¶ 20.

⁴² See, e.g., *AT&T-Qualcomm Order*, 26 FCC Rcd at 17599 ¶ 25; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8717 ¶ 24.

substantial and material question of fact, we must designate the application(s) for hearing.⁴³

IV. PROCEDURAL ISSUES

13. *CCA Petition.* In its petition, CCA argues that consolidation of the proposed transactions with other spectrum transactions involving AT&T “is the only credible way for the Commission to evaluate the broader competitive effects of the proposed transfers.”⁴⁴ In response, the Applicants in their Joint Opposition note that the Commission has already decided to consolidate the various WCS spectrum transactions into one docket and argues that CCA does not offer a basis for further consolidation of transactions that do not involve WCS licenses.⁴⁵

14. We deny the CCA Petition. The Commission is given broad discretion as to how to conduct its proceedings.⁴⁶ Our review process generally accounts for the effects of multiple pending applications, and CCA has not persuaded us that we should formally consolidate the non-WCS transactions in this docket.⁴⁷

15. *Pangasa Petition.* We dismiss the Pangasa Petition for lack of party-in-interest standing. Mr. Pangasa cites concerns in his petition about AT&T’s spectrum purchases in the aggregate and asks that we condition approval of the transactions here on divestiture of certain of AT&T’s spectrum holdings.⁴⁸ The Joint Opposition asserts that Mr. Pangasa fails to meet the criteria for establishing party-in-interest standing and accordingly urges dismissal of the Pangasa Petition.⁴⁹ We agree.

16. The Communications Act of 1934, as amended, and the Commission’s rules require that a petition to deny must contain specific allegations of fact sufficient to show that the petitioner is a party in interest.⁵⁰ To establish party-in-interest standing, a petitioner must allege facts sufficient to demonstrate that grant of the subject application would cause it to suffer a direct injury.⁵¹ In addition, a petitioner must demonstrate a causal link between the claimed injury and the challenged action: it must establish that the injury can be traced to the challenged action and that the injury would be prevented or

⁴³ 47 U.S.C. § 309(e); *see also* News Corp. and DIRECTV Group, Inc., Transferors, and Liberty Media Corp. Transferee, for Authority to Transfer Control, MB Docket No. 07-18, *Memorandum Opinion and Order*, 23 FCC Rcd 3265, 3277 ¶ 22 (2008); Application of EchoStar Communications Corp., General Motors Corp., and Hughes Electronics Corp. (Transferors) and EchoStar Communications Corp. (Transferee), CS Docket No. 01-348, *Hearing Designation Order*, 17 FCC Rcd 20559, 20574 ¶ 25 (2002).

⁴⁴ CCA Petition at 3.

⁴⁵ Joint Opposition at 11-12.

⁴⁶ *See* Section 4(j) of the Communications Act, 47 U.S.C. § 154(j). *See also* Motor Vehicle Mfrs. Ass’n v. State Farm Mutual Auto. Ins. Co., 463 U.S. 29, 43 (1983); Telecommunications Resellers Ass’n v. FCC, 141 F.3d 1193, 1196 (D.C. Cir. 1998); GTE Service Corp. v. FCC, 782 F.2d 263, 273-74 (D.C. Cir. 1986).

⁴⁷ As described above, the Commission has already consolidated into one docket AT&T’s proposed acquisition of WCS licenses from Comcast, Horizon, NextWave, and SDG&E transactions concerning the pertinent WCS licenses, as it states in the following Public Notice. *See generally* AT&T SDG&E Public Notice, 27 FCC Rcd 11159; *see also generally* AT&T WCS Public Notice, 27 FCC Rcd 10329.

⁴⁸ Pangasa Petition at 1-2.

⁴⁹ Joint Opposition at 9-10.

⁵⁰ 47 U.S.C. § 309(d)(1); 47 C.F.R. § 1.939(d).

⁵¹ Applications of T-Mobile License, LLC, AT&T Mobility Spectrum LLC and New Cingular Wireless PCS, LLC For Consent to Assign AWS-1 Licenses, *Order*, 27 FCC Rcd 4124, 4126 ¶ 6 (WTB 2012) (“*T-Mobile-AT&T Order*”); Wireless Co., L.P., *Order*, 10 FCC Rcd 13233, 13235 ¶ 7 (WTB 1995) (“*Wireless Co.*”), citing *Sierra Club v. Morton*, 405 U.S. 727, 733 (1972).

redressed by the relief requested.⁵² We find that neither the Pangasa Petition, filed in Mr. Pangasa's capacity as a "[c]oncerned [c]itizen," nor any of his various subsequent filings asserts specific allegations of fact sufficient to show that Mr. Pangasa is a party in interest with respect to any of these transactions. Instead, Mr. Pangasa's submissions raise general concerns about spectrum aggregation and various wireless industry practices. The Pangasa Petition does not explain how Mr. Pangasa might be injured by assignments of spectrum to AT&T, much less how any such injury might be redressed by denying or conditioning the Applications. We accordingly dismiss the Pangasa Petition for lack of party-in-interest standing. In any event, to the extent the Petition or these subsequent filings raise competition issues with respect to these particular transactions, we address those issues below.

V. QUALIFICATIONS OF APPLICANTS

17. As noted previously, when evaluating applications for consent to assign or transfer control of licenses, Section 310(d) of the Communications Act requires the Commission to determine whether the proposed transaction will serve "the public interest, convenience and necessity."⁵³ Among the factors the Commission considers in its public interest review is whether the applicant for a license has the requisite "citizenship, character, financial, technical, and other qualifications."⁵⁴ Therefore, as a threshold matter, the Commission must determine whether the applicants to the proposed transactions meet the requisite qualifications requirements to hold and transfer licenses under Section 310(d) and the Commission's rules.⁵⁵ Section 310(d) also obligates the Commission to consider whether the proposed assignee is qualified to hold Commission licenses.⁵⁶

18. When evaluating transfers of control or assignments under Section 310(d), the Commission does not, as a general rule, re-evaluate the qualifications of the assignor or transferor unless issues related to basic qualifications have been designated for hearing by the Commission or have been sufficiently raised in petitions to warrant the designation of a hearing.⁵⁷ There has been no such designation for hearing of the basic qualifications for any of the assignors, nor have any issues been sufficiently raised here that would warrant a hearing designation, and we therefore see no reason to re-evaluate the qualifications of the four assignors.

19. Conversely, Section 310(d) obligates the Commission to consider whether the proposed assignee is qualified to hold Commission licenses.⁵⁸ No issues have been raised with respect to the basic

⁵² *T-Mobile-AT&T Order*, 27 FCC Rcd at 4126 ¶ 6; *Wireless Co.*, 10 FCC Rcd at 13235 ¶ 7.

⁵³ 47 U.S.C. § 310(d).

⁵⁴ 47 U.S.C. §§ 308, 310(d); *see also, e.g., AT&T-Qualcomm Order*, 26 FCC Rcd at 17600 ¶ 27; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8718 ¶ 26.

⁵⁵ *See* 47 U.S.C. §§ 214(a), 310(d); 47 C.F.R. § 1.948; *see also, e.g., AT&T-Qualcomm Order*, 26 FCC Rcd at 17560-61 ¶ 27; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8718 ¶ 26.

⁵⁶ *See, e.g., AT&T-Qualcomm Order*, 26 FCC Rcd at 175601 ¶ 28; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8720 ¶ 29.

⁵⁷ *See, e.g., AT&T-Centennial Order*, 24 FCC Rcd at 13931 ¶ 33; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17466 ¶ 33. *See also* Stephen F. Sewell, Assignment and Transfers of Control of FCC Authorizations under Section 310(d) of the Communications Act of 1934, 43 FED. COMM. L.J. 277, 339-40 (1991). The policy of not approving assignments or transfers when issues regarding the licensee's basic qualifications remain unresolved is designed to prevent licensees from evading responsibility for misdeeds committed during the license period. *See id.* The hearing designation is required under Section 309(e) of the Communications Act, 47 U.S.C. § 309(e), only if the record presents a "substantial and material question of fact" whether grant of the application would serve the public interest, convenience, and necessity.

⁵⁸ *See, e.g., AT&T-Centennial Order*, 24 FCC Rcd at 13931 ¶ 33; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17466 ¶ 33.

qualifications of the proposed assignee, AT&T, which we previously and repeatedly have found qualified, through its subsidiaries, to hold Commission licenses. We therefore find that there is no reason to re-evaluate the basic qualifications of AT&T.

VI. POTENTIAL PUBLIC INTEREST HARMS

A. Overview

20. Spectrum is an essential input in the provision of mobile wireless services, and ensuring that sufficient spectrum is available for incumbent licensees as well as potential entrants is critical to promoting effective competition and innovation in the marketplace.⁵⁹ The Communications Act requires the Commission to examine closely the impact of spectrum aggregation on competition, innovation, and the efficient use of spectrum in order to ensure that any transfer of control serves the public interest, convenience, and necessity.⁶⁰

21. The Commission in 2003 moved from a bright-line spectrum “cap” to a case-by-case review of the competitive effects on the marketplace of spectrum aggregation, as well as of the acquisition of business units.⁶¹ In previous transactions, the Commission has used an initial screen to help identify markets where the acquisition of spectrum provides particular reason for further competitive analysis.⁶² The Commission is not, however, limited in its consideration of potential competitive harms solely to markets identified by its initial screen.⁶³

22. In considering the applications before us, we evaluate the potential effects on competition resulting from AT&T’s proposed acquisition of WCS spectrum licenses from Comcast, Horizon, NextWave, and SDG&E, and AT&T’s proposed acquisition of AWS-1 spectrum licenses from NextWave.⁶⁴ Specifically, we evaluate the competitive effects of AT&T’s post-transaction spectrum

⁵⁹ See, e.g., *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10716 ¶ 48; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17601-02 ¶ 30; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17481-82 ¶ 75; Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation For Consent to Transfer Control of Licenses and Authorizations, WT Docket No. 04-70, *Memorandum Opinion and Order*, 19 FCC Rcd 21522, 21569 ¶ 109 (2004) (“*Cingular-AT&T Wireless Order*”); see also Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless, including Commercial Mobile Services, WT Docket No. 10-133, *Fifteenth Report*, 26 FCC Rcd 9664, 9820 ¶ 266 (2011) (“*Fifteenth Mobile Wireless Competition Report*”).

⁶⁰ 47 U.S.C. §§ 214(a), 310(d). See, e.g., 2000 Regulatory Review, Spectrum Aggregation Limits For Commercial Mobile Radio Services, WT Docket No. 01-14, *Report and Order*, 16 FCC Rcd 22668, 22695 ¶ 54 (“*Biennial Review of CMRS Spectrum Aggregation Limits*”).

⁶¹ See *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10716 ¶ 48; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17602 ¶ 31; *AT&T-Centennial Order*, 24 FCC Rcd at 13938 ¶ 50; *Biennial Review of CMRS Spectrum Aggregation Limits*, 16 FCC Rcd at 22693-94 ¶ 50.

⁶² See, e.g., *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10719 ¶ 59; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17602 ¶ 31; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 872021 ¶ 32; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21552 ¶ 58. We recently released a Notice of Proposed Rulemaking that initiates a review of our policies toward mobile spectrum holdings, but we noted that during the pendency of the rulemaking proceeding, we would continue to apply our current case-by-case approach to evaluate mobile spectrum holdings in secondary market transactions and initial spectrum licensing after auctions. See Policies Regarding Mobile Spectrum Holdings, WT Docket No. 12-269, *Notice of Proposed Rulemaking*, 27 FCC Rcd 11710, 11718 ¶ 16 n.59 (2012) (“*Mobile Spectrum Holdings NPRM*”).

⁶³ See *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10716 ¶ 48; see also, e.g., *AT&T-Qualcomm Order*, 26 FCC Rcd at 17609-10 ¶¶ 49-50; *AT&T-Centennial Order*, 24 FCC Rcd at 13946-48 ¶¶ 71-74, ¶ 85.

⁶⁴ Because the instant transactions do not result in the acquisition of wireless business units and customers or change the number of firms in any market, we do not apply an initial screen based on the size of the post-transaction Herfindahl-Hirschman Index (“HHI”) of market concentration and the change in the HHI.

holdings on a local and national level. As detailed below, we conclude that the proposed transactions are not likely to result in competitive or other public interest harms.

B. Market Definition

23. We establish at the outset the appropriate market definitions to aid our evaluation of the proposed acquisition of spectrum by AT&T from Comcast, Horizon, NextWave, and SDG&E. These market definitions include the product and geographic market definitions⁶⁵ that we will apply, as well as the relevant input market for spectrum. We consider arguments made in relation to each transaction in establishing the appropriate definitions, and apply these market definitions to each of these transactions.

1. Product Market

24. In this Order, as in the Commission's most recent transaction reviews, we evaluate the proposed transactions using a combined "mobile telephony/broadband services" product market⁶⁶ that is comprised of mobile voice and data services, including mobile voice and data services provided over advanced broadband wireless networks (mobile broadband services).⁶⁷ We find that AT&T currently provides services in the mobile telephony/broadband market and that no party in the proceedings before us has challenged the mobile telephony/broadband definition. We also note that AT&T states that it plans to use the spectrum at issue in these transactions to support its mobile broadband LTE network.⁶⁸

2. Geographic Markets

25. The Commission has found that the relevant geographic markets for certain wireless transactions are "local"⁶⁹ and also has evaluated a transaction's competitive effects at the national level in those cases where the transaction exhibited certain national characteristics.⁷⁰ The Applicants analyze the competitive effects of the transactions at issue in this proceeding by using a local market definition.⁷¹

⁶⁵ See, e.g., Horizontal Merger Guidelines, U.S. Department of Justice and the Federal Trade Commission, August 19, 2010, at § 4, p. 7 (2010 DOJ/FTC Horizontal Merger Guidelines).

⁶⁶ See *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10717 ¶ 53; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17603 ¶ 33; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8721 ¶ 35; *AT&T-Centennial Order*, 24 FCC Rcd at 13932 ¶ 37. The Commission has previously determined that there are separate relevant product markets for interconnected mobile voice and data services, and also for residential and enterprise services, but found it reasonable to analyze all of these services under a combined mobile telephony/broadband services product market. See *AT&T-Qualcomm Order*, 26 FCC Rcd at 17603 ¶ 33; *AT&T-Verizon Wireless Order* 25 FCC Rcd at 8721 at ¶ 35; *AT&T-Centennial Order*, 24 FCC Rcd at 13932 ¶ 37.

⁶⁷ See *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10717 ¶ 53; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17602-03 ¶¶ 32-33; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8721 ¶ 35; *AT&T-Centennial Order*, 24 FCC Rcd at 13932 ¶ 37.

⁶⁸ See AT&T-Comcast Applications, Public Interest Statement at ii, 11-15; AT&T-NextWave Applications, Public Interest Statement at ii-iii, 9, 12; AT&T-Horizon Applications, Public Interest Statement at i, 9-12; AT&T-SDG&E Application, Public Interest Statement at 4-6.

⁶⁹ See *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10718 ¶ 54; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17604 ¶ 34; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8722 ¶ 36; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21562-63 ¶¶ 89-90.

⁷⁰ See *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10719 ¶ 58; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17604-05 ¶¶ 34-37.

⁷¹ See AT&T-NextWave Applications, Public Interest Statement at 14-15; AT&T-Horizon Applications, Public Interest Statement at 13-14; AT&T-Comcast Applications, Public Interest Statement at 16-17; AT&T-SDG&E Application, Public Interest Statement at 7.

26. Because most consumers use their mobile telephony/broadband services at or close to where they live, work, and shop, they purchase mobile telephony/broadband services from providers that offer and market services where they live, work, and shop.⁷² Service sold in distant locations is generally not a good substitute for service near a consumer's home or work.⁷³ In addition, service providers compete at the local level in terms of coverage, service quality, and localized promotions.⁷⁴ Consistent with past transactions, we will primarily use CMAs as the local geographic markets in which we analyze the potential competitive harms arising from spectrum aggregation as a result of these transactions.⁷⁵

27. However, as the Commission has previously recognized, two key competitive variables – prices and service plan offerings – do not vary for most providers across most geographic markets.⁷⁶ The four nationwide mobile telephony/broadband service providers (AT&T, Verizon Wireless, Sprint, and T-Mobile), as well as some other providers, set the same rates for a given plan everywhere and advertise nationally.⁷⁷ In addition, certain key elements of wireless services, such as the development and deployment of mobile broadband equipment and devices, are done largely on a national scale.⁷⁸

28. For purposes of evaluating the competitive effects of AT&T's acquisition of spectrum from Comcast, Horizon, NextWave, and SDG&E, we use both local and national markets. A national market evaluation is appropriate because the proposed acquisition of WCS spectrum by AT&T would be in a substantial majority of local markets across the country,⁷⁹ and the harms that may occur could easily have nationwide competitive effects on the mobile telephony/broadband services market.⁸⁰

3. Input Market for Spectrum

29. When assessing spectrum aggregation in its review of wireless transactions, the Commission evaluates the current spectrum holdings of the acquiring firm that are "suitable" and "available" in the near term for the provision of mobile telephony/broadband services.⁸¹ The Commission

⁷² See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13934 ¶ 41; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17472 ¶; see also *Fifteenth Annual Competition Report*, 26 FCC Rcd at 9693 ¶¶ 23-24.

⁷³ See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13934 ¶ 41; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17472 ¶ 52.

⁷⁴ See, e.g., *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8728 ¶ 50.

⁷⁵ See, e.g., *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10718 ¶ 56; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17604 ¶ 34.

⁷⁶ See *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10718 ¶ 57; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17604-05 ¶¶ 34-37.

⁷⁷ See, e.g., *Fifteenth Annual Mobile Wireless Competition Report*, 26 FCC Rcd at 9748-50 ¶¶ 129-36; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10718-19 ¶ 57.

⁷⁸ See *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10719 ¶ 57.

⁷⁹ AT&T would acquire 10-20 megahertz of WCS A and B Block spectrum in 473 CMAs, covering close to 70 percent of the population of the contiguous 48 states.

⁸⁰ See *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10719 ¶ 58.

⁸¹ See *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10719 ¶ 59; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17605-06 ¶ 38; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8722 ¶ 37; *AT&T-Centennial Order*, 24 FCC Rcd at 13933 ¶ 39. As the Commission previously has explained, suitability has been determined by whether the spectrum is capable of supporting mobile service given its physical properties and the state of equipment technology, whether the spectrum is licensed with a mobile allocation and corresponding service rules, and whether the spectrum is committed to another use that effectively precludes its uses for the relevant mobile service. See *AT&T-Qualcomm Order*, 26 FCC Rcd at 17605-06 ¶ 38; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17591-92 ¶ 53. With respect to availability, we have considered particular spectrum to be a relevant input if it is fairly certain that it will meet the (continued....)

has previously determined that cellular, PCS, Specialized Mobile Radio (“SMR”), and 700 MHz band spectrum, as well as AWS-1 and Broadband Radio Service (“BRS”) spectrum where available, meet this definition.⁸² The Commission has traditionally applied an initial screen to help identify local markets where a proposed transaction might raise particular concerns of spectrum concentration.⁸³ The current screen identifies local markets where an entity would acquire more than approximately one-third of the total spectrum suitable and available for the provision of mobile telephony/broadband services.⁸⁴ The Applicants argue that any modifications to the screen should be considered in an industry-wide rulemaking but that, if the Commission were to revise the screen for these proposed transactions to include WCS spectrum, “consistency” requires that the Commission also include all of the BRS/EBS spectrum, the MSS/ATC spectrum, and the PCS G Block.⁸⁵

30. As noted above, subsequent to the filing of the instant applications, we initiated a review of our policies toward mobile spectrum holdings. In the *Mobile Spectrum Holdings NPRM*, we noted, though, that during the pendency of the rulemaking proceeding, we would continue to apply our current case-by-case approach to evaluate mobile spectrum holdings in secondary market transactions and initial spectrum licensing after auctions.⁸⁶ Historically, as part of this case-by-case approach in transactions, we consider whether to modify the spectrum screen.⁸⁷

31. In light of our recent revisions to the WCS service rules to facilitate the provision of mobile broadband services,⁸⁸ we find that 20 megahertz of WCS spectrum – comprised of the paired A and B Blocks – are suitable and available for the provision of mobile telephony/broadband services and

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criteria for suitable spectrum in the near term. See *AT&T-Qualcomm Order*, 26 FCC Rcd at 17606 ¶ 38. See also *2010 DOJ/FTC Horizontal Merger Guidelines* at § 9.1, p. 29.

⁸² See, e.g., *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17591-92 ¶ 53 (2008). The *Mobile Spectrum Holdings NPRM* sought comment on whether to add or subtract spectrum bands used in the evaluation of mobile spectrum holdings and whether to make distinctions between different bands on the basis of factors such as propagation characteristics. See *Mobile Spectrum Holdings NPRM*, 27 FCC Rcd at 11711 ¶ 2, 11722-23 ¶¶ 26-29, 11725-28 ¶¶ 35-38.

⁸³ See, e.g., *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10719 ¶ 59; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17602 ¶ 31.

⁸⁴ See *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17473 ¶ 54.

⁸⁵ See AT&T-Comcast Applications, Public Interest Statement at 17 n.56; AT&T-NextWave Applications, Public Interest Statement at 15 n.35; AT&T-Horizon Applications, Public Interest Statement at 14 n.38. With respect to the PCS G Block (the 10 megahertz of spectrum that Sprint acquired as a result of the 800 MHz Rebanding Order), the Commission noted in the *Verizon Wireless-SpectrumCo Order* that it has included that spectrum in the screen as part of the PCS spectrum band. See *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10721 ¶ 63 n.151 (citing Improving Public Safety Communications in the 800 MHz Band, WT Docket 02-55, Consolidating the 800 and 900 MHz Industrial/Land Transportation and Business Pool Channels, ET Docket No. 00-258, *Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order*, 19 FCC Rcd 14969 (2004)).

⁸⁶ See *Mobile Spectrum Holdings NPRM*, 27 FCC Rcd at 11718 ¶ 16 n.59.

⁸⁷ See, e.g., *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17591-92 ¶ 53 (2008).

⁸⁸ We adopted a number of provisions in the *WCS Order on Reconsideration* to facilitate the use of the WCS A and B Blocks for mobile broadband services, including relaxing the frequency band restrictions on WCS frequency division duplexing (FDD) base station operations, relaxing restrictions on low-power fixed WCS customer premises equipment outdoor use and outdoor antenna use under certain circumstances, eliminating the power spectral density (PSD) limit for WCS mobile devices operating in WCS Blocks A and B under certain circumstances, and eliminating the duty cycle requirements for WCS mobile, portable, and fixed customer premises equipment (CPE) using FDD-based technology. See *WCS Order on Reconsideration*, 27 FCC Rcd at 13668 ¶ 36, 13677-78 ¶ 63, 13682-83 ¶¶ 73-75, and 13691-92 ¶ 100.

should therefore be added to the spectrum screen. Further, AT&T has indicated that it will take substantial steps to deploy LTE in the band (including through the acquisition of the spectrum at issue in these transactions).⁸⁹ We note that we do not include the WCS C and D Blocks in the screen at this time because, in the *WCS Order on Reconsideration*, we prohibited mobile and portable transmitters from operating in all portions of the WCS C and D Blocks to protect adjacent operators.⁹⁰

32. For purposes of this transaction, we decline to include in the screen additional BRS spectrum, EBS spectrum, and the MSS/ATC spectrum.⁹¹ We find that Applicants have provided no new arguments that persuade us to change these prior Commission determinations⁹² in the context of the proposed transactions, particularly given that we do not yet have the benefit of a full record in the *Mobile Spectrum Holdings NPRM*.⁹³ We note that the screen modifications proposed by the Applicants, if implemented, would not affect our conclusion below that the proposed transactions are unlikely to result in competitive harms.

C. Competitive Effects of Transactions on Mobile Telephony/Broadband Services: Spectrum Concentration

33. To evaluate the potential competitive effects of AT&T's proposed acquisition of spectrum through the proposed secondary market transactions, we first apply the spectrum screen,⁹⁴ and then evaluate the resulting impact of AT&T's spectrum holdings on both a local and national level. Our modified spectrum screen triggers 10 local markets covering approximately 1.3 million people, or just under half a percent of the population of the contiguous 48 states.⁹⁵ These 10 local markets are triggered

⁸⁹ See AT&T-Comcast Applications, Public Interest Statement at 13; AT&T-NextWave Applications, Public Interest Statement at 8-10; AT&T-Horizon Applications, Public Interest Statement at 9-10; AT&T-SDG&E Application, Public Interest Statement at 5-6.

⁹⁰ See *WCS Order on Reconsideration*, 27 FCC Rcd at 13688 ¶ 88.

⁹¹ The Applicants requested that if we add WCS spectrum to the screen, we also add additional BRS spectrum, EBS spectrum, and the MSS/ATC spectrum. See AT&T-Comcast Applications, Public Interest Statement at 17 n.56; AT&T-NextWave Applications, Public Interest Statement at 15 n.35; AT&T-Horizon Applications, Public Interest Statement at 14 n.38.

⁹² See, e.g., *Sprint Nextel-Clearwire Order*, 23 FCC Rcd 17570, 17598-99 ¶¶ 70-71 (2008); *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10720 ¶ 60; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17607 ¶ 41.

⁹³ Comments on the *Mobile Spectrum Holdings NPRM* were due on Nov. 28, 2012, and reply comments are due on Jan. 7, 2013. See Policies Regarding Mobile Spectrum Holdings, WT Docket No. 12-269, *Order*, 27 FCC Rcd 13477 (WTB 2012).

⁹⁴ See Section VI.B.3 (Input Market for Spectrum), *supra*. Our modified spectrum screen is triggered where the Applicants would have, on a market-by-market basis: 102 megahertz or more of cellular, PCS, SMR, 700 MHz, and WCS spectrum, where neither BRS nor AWS-1 spectrum is available; 121 megahertz or more of spectrum, where BRS spectrum is available, but AWS-1 spectrum is not available; 132 megahertz or more of spectrum, where AWS-1 spectrum is available, but BRS spectrum is not available; or 151 megahertz or more of spectrum where both AWS-1 and BRS spectrum are available.

⁹⁵ The initial spectrum screen identified 18 counties in 10 CMAs out of a total of 41 counties in those markets: CMA130 (Erie County, PA); CMA 238 (Mercer County, PA); CMA 475 (Alpena, Montmorency, and Presque Isle Counties, MI); CMA 476 (Lake and Mason Counties, MI); CMA 477 (Roscommon County, MI); CMA 478 (Gratiot, Isabella, Mecosta, Montcalm, and Newaygo Counties, MI); CMA 563 (Ulster County, NY); CMA 591 (Tuscarawas, OH); CMA 595 (Columbiana County, OH); CMA 618 (Clearfield and Jefferson Counties). AT&T's post-transactions spectrum holdings would exactly equal the screen trigger in six of these counties. The screen was exceeded by 2 megahertz in three counties, by 4 megahertz in two counties, by 9 megahertz in two counties, by 12 megahertz in three counties, and by 14 megahertz in two counties. We note that in our competitive analysis, out of (continued....)

by AT&T's acquisition of the relevant WCS spectrum.⁹⁶ Consistent with prior transactions,⁹⁷ in further analyzing these 10 local markets, we consider facilities-based entities providing mobile telephony/broadband services using cellular, broadband PCS, SMR, 700 MHz, AWS-1, and BRS spectrum as market participants for the purposes of our competitive analysis.

34. We have looked closely at the markets identified by the spectrum screen and evaluated various characteristics of these markets that would allow rival service providers to provide an effective competitive constraint in each of these 10 local markets. These competitive factors include, but are not limited to, population density, the total number of rival service providers, rival firms' market shares, population and land area coverage, and availability of spectrum within the market for incumbent service providers as well as for potential entrants to provide mobile telephony/broadband services.⁹⁸ Specifically, we looked at whether it would be likely that rival service providers or potential entrants would be foreclosed from expanding capacity, deploying mobile broadband technologies, or entering the market and also considered whether rivals' costs would be increased to the extent that they would be less likely to be an effective competitive constraint.⁹⁹ If rival service providers are unable to expand capacity or deploy mobile broadband technologies, this may reduce quality and consumer choice in these local markets.¹⁰⁰

35. Our evaluation of these 10 local markets, taking into full consideration the factors identified above, finds that competitive harms are not likely. We find that AT&T is not likely to have the ability to increase the price of or reduce the quality of its service offerings in any of these local markets. As noted above, the instant transactions do not result in the acquisition of wireless business units and customers or change the number of firms in any of the markets. Our analysis of the individual local markets indicates that in three of the triggered CMAs, there are four nationwide providers with market presence and capacity.¹⁰¹ In these three CMAs, the three nationwide providers other than AT&T each has between 40 megahertz and 114 megahertz of spectrum. In the other seven triggered CMAs, there are at least two other nationwide providers with market presence and capacity.¹⁰² In these seven CMAs, the two

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an abundance of caution, we account for pending transactions, as the Applicants did in representing AT&T's spectrum holdings. *See, e.g., AT&T-NextWave Applications* at Appendix B page 32.

⁹⁶ AWS-1 spectrum is not being assigned to AT&T in any of these 10 local markets.

⁹⁷ *See, e.g., Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17600-01 ¶ 75.

⁹⁸ We derive market shares from our analysis of data compiled in our NRUF database. We derive our measures of network coverage from Mosaik and U.S. Census data, and we obtain spectrum holdings from our licensing databases and the various Applications.

⁹⁹ *See Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10725 ¶ 72; Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. for Consent to Assign Licenses and Transfer Control of Licenses, MB Docket No. 10-56, *Memorandum Opinion and Order*, 26 FCC Rcd 4238, 4252 ¶ 34 (2011).

¹⁰⁰ *See Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10725 ¶¶ 72, 74 nn.186, 187. If rival service providers need access to additional spectrum, such as the spectrum in these transactions, to improve the quality of their current or future service offerings, consumers could potentially be harmed in some instances by the inability of these rival service providers to offer a higher quality service or by higher prices that reflect higher costs of alternative capacity expansion methods such as adding towers or cell splitting. In addition, this could potentially confer on AT&T an incentive to delay its own improvements in service quality or delay expansion of coverage in local markets.

¹⁰¹ Each of these providers serves approximately [REDACTED] percent or more of the subscribers in the market, and covers more than 70 percent of the population and about 50 percent or more of the land area.

¹⁰² Each of these providers serves approximately [REDACTED] percent or more of the subscribers in the market and covers more than 70 percent of the population and about 50 percent or more land coverage. In one of the CMAs, another nationwide provider does not yet have a significant retail market presence but does cover more than 70 percent of the population and more than 50 percent of the land area.

nationwide providers other than AT&T each holds between 57 megahertz and 114 megahertz of spectrum. In addition, in these CMAs, non-operating licensees, together, hold an average of 46 megahertz of spectrum in these markets.

36. Thus, it appears that sufficient spectrum is available post-transaction for rival service providers to expand or for potential entry to occur, and that the assignment of the spectrum at issue is unlikely to raise rivals' costs or to foreclose entry or expansion in any of the 10 triggered local markets. We find, based on market share, population and land area coverage, and relative spectrum holdings, that competitive harm is unlikely in any of these 10 triggered local markets.

37. We also analyze, consistent with recent Orders, any potential effects in the national market that may result from AT&T's acquisition of spectrum through these transactions. If rival service providers, as a result of these transactions, would be foreclosed or their costs raised in many local markets across the country, such that it would be significantly more difficult or expensive to enter, expand, or introduce advanced mobile broadband technologies, then mobile telephony/broadband prices might increase nationwide.¹⁰³ As a result of the proposed transactions, AT&T would acquire 10 to 20 megahertz of unencumbered WCS A and B Block spectrum in 473 CMAs across the country, covering close to 70 percent of the population of the contiguous 48 states. Given the near nationwide acquisition of WCS spectrum in these transactions, along with AT&T's current holdings of WCS spectrum, it is not clear that rivals would effectively have access to WCS spectrum for the provision of mobile telephony/broadband service. We note, however, that there is a limited amount of spectrum in the WCS band, and there is not yet a well-developed WCS ecosystem immediately available in the United States for the provision of mobile broadband service.¹⁰⁴ We therefore find no significant competitive concern arising from AT&T's proposed acquisition of much of the available WCS spectrum or from AT&T's rivals' lack of access to that band. Given these factors and the general availability of spectrum in other bands for the provision of mobile telephony/broadband service, the proposed transactions are unlikely to either foreclose expansion by other service providers or raise rivals' costs to the extent that competition would be harmed at the national level.

38. Accordingly, based on our evaluation of the competitive effects of AT&T's acquisition of spectrum through the proposed secondary market transactions, we find that proposed transactions are not likely to result in competitive or other public interest harms.

D. Other Issues Raised by Petitioners

39. Level 3 argues in its comments that the proposed transactions will increase the incentive of AT&T to continue to "discriminate anti-competitively" against Level 3 and others with respect to "interconnection capacity."¹⁰⁵ Level 3 asks the Commission to impose on AT&T several conditions related to interconnection with internet backbone carriers.¹⁰⁶ In response, the Applicants contend that Level 3 is improperly attempting to use this proceeding as leverage in a "private commercial dispute" that has nothing to do with the transactions at issue.¹⁰⁷ We decline to adopt the conditions Level 3 seeks. As noted above, we find that the proposed transactions are not likely to result in competitive harms. Further, Level 3 has not persuaded us that the transactions are likely to cause the anti-competitive behavior it asks us to address or shown how the transactions will materially change AT&T's incentives or ability to

¹⁰³ See *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10727 ¶ 76.

¹⁰⁴ Compare *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10724-25 ¶ 70.

¹⁰⁵ See Level 3 Comments at 1, 3; see also Level 3 Reply at 1-2.

¹⁰⁶ See Level 3 Comments at 9-10; Level 3 Reply at 3-4.

¹⁰⁷ See Joint Opposition at 4, 8.

engage in the practices about which Level 3 is complaining.¹⁰⁸ As we have stated in prior proceedings, the Commission generally will not impose conditions to remedy pre-existing harms or harms that are unrelated to the transaction at issue.¹⁰⁹

VII. POTENTIAL PUBLIC INTEREST BENEFITS

40. After assessing the potential competitive harms of the proposed transactions, we next consider whether the proposed assignment of the licenses is likely to generate verifiable, transaction-specific public interest benefits that outweigh any identified competitive harms.¹¹⁰ In doing so, we ask whether the assignee would be able and would be likely to pursue business strategies resulting in demonstrable and verifiable benefits to consumers that likely would not be pursued but for the transaction.¹¹¹ As discussed below, we anticipate that the proposed transactions likely will result in certain transaction-specific public interest benefits. In particular, we anticipate that the proposed transactions could facilitate the transition of long-underutilized WCS spectrum towards mobile broadband use, thereby supporting our goal of expanding mobile broadband deployment throughout the country. As we have concluded above, the potential harms presented by these transactions are not likely, and thus, using our sliding scale approach, we can accept a lower showing to recognize the potential benefits of the transaction. We reach this conclusion, however, recognizing that it is difficult for us to precisely quantify either the magnitude of or the time period in which these benefits will be realized.¹¹²

A. Analytical Framework

41. The Commission has recognized that “[e]fficiencies generated through a merger can mitigate competitive harms if such efficiencies enhance the merged firm’s ability and incentive to compete and therefore result in lower prices, improved quality of service, enhanced service or new products.”¹¹³ This same analysis applies to an acquisition of assets like that contemplated by the proposed transactions before us. Under Commission precedent, the Applicants bear the burden of demonstrating that the potential public interest benefits of the proposed transaction outweigh the potential

¹⁰⁸ Indeed, Level 3 alleges that AT&T has already engaged in such behavior unrelated to these transactions “in much the same way that Comcast [one of the assignors] has.” Level 3 Comments at 3.

¹⁰⁹ See, e.g., *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10734 ¶ 94; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17622 ¶ 79.

¹¹⁰ See, e.g., *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10734 ¶ 95; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17622-23 ¶ 81; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8736 ¶ 73; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21599 ¶ 201.

¹¹¹ See, e.g., *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10734 ¶ 95; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17623 ¶ 81; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8736 ¶ 73; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21599 ¶ 201.

¹¹² See, e.g., *AT&T-Qualcomm Order* at ¶ 82; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8736 ¶ 73; *AT&T-Centennial Order*, 24 FCC Rcd at 13953 ¶ 88; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17495 ¶ 115; Applications of Cellco Partnership d/b/a Verizon Wireless and Rural Cellular Corporation, WT Docket No. 07-208, *Memorandum Opinion and Order and Declaratory Ruling*, 23 FCC Rcd 12463, 12504 ¶ 92 (2008); Application of AT&T Inc. and Dobson Communications Corp. for Consent to Transfer Control of Licenses and Authorizations, WT Docket No. 07-153, *Memorandum Opinion and Order*, 22 FCC Rcd 20295, 20330 ¶ 74 (2007).

¹¹³ See, e.g., *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10734 ¶ 96; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17623 ¶ 83 (internal quotations omitted); see also, e.g., *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8736 ¶ 74; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21599 ¶ 204.

public interest harms.¹¹⁴

42. The Commission applies several criteria in deciding whether a claimed benefit should be considered and weighed against potential harms.¹¹⁵ First, the claimed benefit must be transaction-specific. Second, the claimed benefit must be verifiable. Because much of the information relating to the potential benefits of a transaction is in the sole possession of the applicants, they are required to provide sufficient evidence supporting each claimed benefit so that the Commission can verify its likelihood and magnitude. In addition, “the magnitude of benefits must be calculated net of the cost of achieving them.”¹¹⁶ Finally, the Commission applies a “sliding scale approach” to evaluating benefit claims.¹¹⁷ Under this sliding scale approach, where potential harms appear “both substantial and likely, a demonstration of claimed benefits also must reveal a higher degree of magnitude and likelihood than we would otherwise demand.”¹¹⁸ Conversely, where potential harms appear less likely and less substantial, as is the case here, we will accept a lesser showing.¹¹⁹

B. Asserted Benefits

43. The Applicants assert that the proposed transactions would result in more efficient spectrum use and would enable AT&T to augment its capacity to offer faster and higher quality services to customers in the license areas subject to the proposed transactions.¹²⁰ In particular, the Applicants claim that the proposed transactions would enable AT&T to deploy a contiguous 10 x 10 megahertz block of WCS spectrum for LTE, which would result in greater spectral efficiency and throughput rates on its

¹¹⁴ See, e.g., *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10734 ¶ 96; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17623 ¶ 83; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8737 ¶ 74; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21599 ¶ 204.

¹¹⁵ See, e.g., *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10734 ¶ 97; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17623 ¶ 84; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8737 ¶ 75; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 205.

¹¹⁶ See, e.g., *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10735 ¶ 97; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17624 ¶ 84; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8737 ¶ 75; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶¶ 205-06.

¹¹⁷ See, e.g., *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10735 ¶ 98; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17624 ¶ 85; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8737 ¶ 76; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 206.

¹¹⁸ See, e.g., *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10735 ¶ 98; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17624 ¶ 85; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8737 ¶ 76; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 206; cf. *2010 DOJ/FTC Horizontal Merger Guidelines* at § 10, p. 31 (“The greater the potential adverse competitive effect of a merger . . . the greater must be cognizable efficiencies in order for the Agency to conclude that the merger will not have an anticompetitive effect in the relevant market. When the potential adverse competitive effect of a merger is likely to be particularly large, extraordinarily great cognizable efficiencies would be necessary to prevent the merger from being anticompetitive.”).

¹¹⁹ See, e.g., *AT&T-Qualcomm Order*, 26 FCC Rcd at 17624 ¶ 85; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8737 ¶ 76; *AT&T-Centennial Order*, 24 FCC Rcd at 13954 ¶ 91; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17497 ¶ 118; *Sprint Nextel-Clearwire Order*, 23 FCC Rcd at 17616 ¶ 117.

¹²⁰ See AT&T-Comcast Applications, Public Interest Statement at 12-13; AT&T-Horizon Applications, Public Interest Statement at 10-12; AT&T-NextWave Applications, Public Interest Statement at 11, 12; see also AT&T-SDG&E Application, Public Interest Statement at 5 (asserting that AT&T’s acquisition of the SDG&E WCS licenses would remove a potential threat of harmful interference to SDARS and enable AT&T to make more efficient use of the underutilized WCS band to expand its LTE capacity).

network.¹²¹ Moreover, the Applicants assert that the WCS band currently is underutilized and that AT&T “has both the incentive and the resources” to put this spectrum to more efficient use in support of its LTE network.¹²² Specifically, AT&T asserts that it expects to commence deployment of LTE infrastructure in the WCS band in as early as three years, allowing AT&T to enhance its wireless broadband services with additional spectrum capacity to support rising mobile Internet usage.¹²³

44. With respect to AT&T’s proposed acquisition of AWS spectrum from NextWave, the Applicants state that this AWS spectrum would enable AT&T to expand its LTE offerings in the license areas subject to this transaction, in some of which AT&T does not currently have enough AWS spectrum to support a 10 x 10 megahertz LTE deployment.¹²⁴ The Applicants note that AT&T already has made a multi-billion dollar commitment to the deployment of LTE networks in the AWS spectrum band, that AT&T’s network architecture supports services in the AWS band, and that AT&T is developing broad and diverse portfolios of devices that can be used for LTE services in the AWS band.¹²⁵

C. Discussion

45. As an initial matter, we note that no party disputes that AT&T – as well as its current and potential customers – would benefit from the additional spectrum it seeks to acquire. We find that the proposed transfer of spectrum from Comcast, Horizon, NextWave, and SDG&E to AT&T would have some important public interest benefits. In particular, we anticipate that the proposed transactions would facilitate the transition of long-underutilized WCS spectrum towards mobile broadband use, thereby supporting our goal of expanding mobile broadband deployment throughout the country. We note that the Applications state that the spectrum is currently underutilized by Comcast, Horizon, NextWave, and SDG&E,¹²⁶ and that AT&T has articulated in the record plans to take a number of steps towards deployment of LTE infrastructure in the band. In addition, we anticipate that AT&T’s acquisition of AWS spectrum from NextWave would allow AT&T to expand its mobile broadband offerings, particularly given AT&T’s ongoing efforts to integrate the AWS band into its LTE network. We expect that the proposed transactions would enable more efficient use of spectrum to provide new and better services to consumers.

VIII. CONCLUSION

46. We find that the proposed transactions are not likely to result in competitive or other public interest harms, and we anticipate that they are likely to result in certain public interest benefits, including facilitating the transition of long-underutilized WCS spectrum towards mobile broadband use. Because these potential public interest benefits outweigh any potential public interest harms, we conclude

¹²¹ See AT&T-Comcast Applications, Public Interest Statement at 12-13; AT&T-Horizon Applications, Public Interest Statement at 10; AT&T-NextWave Applications, Public Interest Statement at 9.

¹²² See AT&T-Comcast Applications, Public Interest Statement at 11; AT&T-NextWave Applications, Public Interest Statement at 8; AT&T-SDG&E Application, Public Interest Statement at 5.

¹²³ See AT&T-Comcast Applications, Public Interest Statement at 14; AT&T-Horizon Applications, Public Interest Statement at 14; AT&T-NextWave Applications, Public Interest Statement at 11; *see also* AT&T Public Policy Blog, *FCC Approves AT&T, Sirius XM WCS Spectrum Band Proposal*, October 17, 2012, *available at* <http://attpublicpolicy.com/fcc/fcc-approves-att-sirius-xm-wcs-spectrum-band-proposal/> (last visited December 4, 2012).

¹²⁴ See AT&T-NextWave Applications, Public Interest Statement at 11-12.

¹²⁵ See AT&T-NextWave Applications, Public Interest Statement at 11-12.

¹²⁶ See, e.g., AT&T-Comcast Applications, Public Interest Statement at 8-9. SDG&E notes that it had been using the spectrum for smart grid purposes but has said that such use would be incompatible with the rules adopted in the *WCS Order on Reconsideration*. See AT&T-SDG&E Application, Public Interest Statement at 1, 5.

that consent to the proposed transactions would serve the public interest.

IX. ORDERING CLAUSES

47. Accordingly, having reviewed the applications, the petitions, and the record in this matter, IT IS ORDERED that, pursuant to sections 4(i) and (j), 309, 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 309, and 310(d), the applications for the assignment of WCS licenses from Comcast to AT&T are GRANTED.

48. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 309, and 310(d), the applications for the assignment of WCS licenses from Horizon to AT&T are GRANTED.

49. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 309, and 310(d), the applications for the transfer of control of WCS and AWS-1 licenses from NextWave to AT&T are GRANTED.

50. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 309, and 310(d), the application for the assignment of WCS licenses from SDG&E to AT&T is GRANTED.

51. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 309, and 310(d), the Petition filed by Maneesh Pangasa is hereby DISMISSED for the reasons stated herein.

52. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 309, and 310(d), the petition filed by the Competitive Carriers Association for consolidated treatment of the applications for the assignment and transfer of WCS and AWS-1 licenses to AT&T is DENIED for the reasons stated herein.

53. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 309, and 310(d), the request for conditions in the Comments filed by Level 3 Communications, LLC is DENIED for the reasons stated herein.

54. IT IS FURTHER ORDERED that this Memorandum Opinion and Order SHALL BE EFFECTIVE upon release. Petitions for reconsideration under section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, may be filed within thirty days of the date of public notice of this Memorandum Opinion and Order.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary